



sole remedy is through a writ of habeas corpus, and that relief is not available in a § 1983 civil rights case. Pursuant to *Castro v. United States*, 540 U.S. 375, 381-83 (2003), Defendant is notified that his complaint will be recharacterized as a 28 U.S.C. § 2254 petition. Defendant is warned that any subsequent § 2254 petition will be subject to restrictions as a second or successive § 2254 petition. *See In re Tolliver*, 97 F.3d 89, 90 (5th Cir. 1996).

It does not appear Petitioner Harris has exhausted his claim. Habeas corpus relief, whether sought pursuant to 28 U.S.C. § 2254 or § 2241, is not available until the petitioner has exhausted the available State remedies. *Dickerson v. State of Louisiana*, 816 F. 2d 220, 225 (5th Cir. 1987). To exhaust state remedies in Texas, a petitioner must present her claim to the Texas Court of Criminal Appeals. *Richardson v. Procnier*, 762 F. 2d 429, 431 (5th Cir. 1985). According to the Texas Court of Criminal Appeals's website, Petitioner Harris has not filed a state habeas corpus application. Therefore, his claim is unexhausted.

Also, Petitioner's claim lacks merit. He contends he should have been given credit under Tex. Code Crim. Proc. art. 43.09. However, that statute concerns discharging a fine through work while in a county jail, and it does not control how the eighteen-month sentence is discharged.

Petitioner states he received pretrial jail credit that in effect made June 5, 2009, the sentence begin date. According to the Texas Department of Criminal Justice website, Petitioner's 18 month, or one year and six months, sentence is set to be discharged on December 1, 2010, which is slightly less than 18 months.

Petitioner has not shown he has not received any time credit to which he is entitled. Therefore, he has not shown he is entitled to habeas corpus relief.

**Therefore, Petitioner is directed to show cause within twenty (20) days why his habeas corpus petition should not be dismissed for failure to exhaust his State remedies and because Petitioner does not allege facts showing he is entitled to habeas corpus relief.** If Petitioner fails

to respond to this Order, his Petition will also be dismissed for failure to prosecute and failure to comply with the Orders of this Court pursuant to Fed. R. Civ. P. 41(b). *See Martinez v. Johnson*, 104 F. 3d 769, 772 (5th Cir. 1997).

**It is so ORDERED.**

**SIGNED** on May 27, 2010.

A handwritten signature in black ink, reading "Nancy Stein Nowak", written over a horizontal line.

NANCY STEIN NOWAK  
UNITED STATES MAGISTRATE JUDGE